

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BORTON AND SONS, INC.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

NO: 12-CV-3132-TOR

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

BEFORE THE COURT is Defendant's Motion to Dismiss (ECF No. 10). Defendant filed this motion on January 30, 2013. As of the date of this Order, Plaintiff has not filed a response. Pursuant to Local Rule 7.1(d), the Court will treat Plaintiff's failure to file a responsive memorandum as consent to the entry of an adverse order on the motion. L.R. 7.1(d).

Further, the Court finds that Plaintiff's complaint fails to state a claim upon which relief may be granted. Plaintiff Borton and Sons, Inc. ("Borton"), as a Subchapter S corporation, lacks standing to pursue a refund action. Because Borton's tax liability was merely "passed through" to its individual shareholders,

1 any refund action must be pursued by the individual shareholders rather than by the
2 corporation itself. *Alon Int'l, Inc. v. United States*, 910 F. Supp. 233, 236 (W.D.
3 Pa. 1995); *Ratcliff v. McKeever*, 1984 WL 1010 at *1 n. 1 (S.D.N.Y. 1984)
4 (unpublished).

5 **ACCORDINGLY, IT IS HEREBY ORDERED:**

6 Defendant's Motion to Dismiss (ECF No. 10) is **GRANTED**.

7 The District Court Executive is hereby directed to enter this Order and
8 Judgment accordingly, provide copies to counsel, and **CLOSE** the file.

9 **DATED** April 2, 2013.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge